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OFFICE OF PETITIONS

In re Application of
Carter
Application No. 09/832,509
Patent No. 6,896,177 B2
Filed: April 11, 2001

: DECISION GRANTING PETITION

This decision is in response to Applicant's "PETITION TO REVERSE REDUCTION OF PERIOD OF ADJUSTMENT OF PATENT TERM ADJUSTMENT AND COMBINED AFFIDAVIT" timely¹ filed on October 1/June 28, 2005 requesting that the Patent Term Adjustment be adjusted from four hundred and seventy-six (476) days to the amount of five hundred and eighty-eight (588) days. This petition is being considered pursuant to 37 CFR 1.705(d).

Applicant's petition is **GRANTED**. The Office will *sua sponte* issue a certificate of correction reflecting an adjustment of 588 days rather than the 476 day amount printed on the front of the patent. The Office will also adjust the PTA calculation reflected in PAIR to reflect this decision.

Applicant argues that the Office erred in asserting an applicant delay of one hundred and twelve (112) days for the submission of the letter on February 2, 2005 requesting that Office clarify that the reason for cancellation of claims 22-26 was the restriction requirement. Applicant noted that the examiner's answer did not clarify the reason for the cancellation of claims 22-26. Applicant noted the importance of such clarification to avoid future double patenting rejections.

Applicant's arguments are persuasive. A review of the file reflects that the examiner did not clarify why any of claims 17-33 were canceled. Applicant was merely commenting on the reasons for allowance and the reason for the cancellation of some of the claims (22-26). The Office has expressly suggesting that comments on the reasons for allowance is not considered a failure to engage in reasonable efforts to conclude prosecution of the application. See 37 CFR 1247 OG 111 (June 26, 2001). Accordingly, the Office erred in assessing a reduction pursuant to 37 CFR 1.704(c)(10).

After review of this decision, this application will be forwarded to the certificate of correction

¹Patent Issued on May 24, 2005.

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branch for a prompt issuance of a certificate of correction.

The Office acknowledges the receipt of \$200.00 for the application for patent term adjustment (petition). No additional fees are required by the Office.

Any questions concerning the issuance of this patent should be directed to Kery A. Fries, Office of Patent Legal Administration, Office of Deputy Commissioner for Patent Examination Policy at 571-272-7757

Kery A. Fries

Kery A. Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

cc: Adjusted Pair Calculation
Draft Certificate of Correction